Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-220

WILLIE WILLIAMS
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, by and through his attorney, RICHARD R. NELSON, prays that a Writ of Certiorari issue to review the judgment heretofore entered against him by the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

Petitioner was convicted in the United States District Court for the Eastern District of Michigan, Southern Division, by the Honorable Philip Pratt, for violation of Title 21 — U.S. Code §§ 841(a) (1) on September 21, 1978. On July 11, 1979, the United States Court of Appeals for the Sixth Circuit affirmed the conviction. (See Appendix A, *infra*.)

JURISDICTION

The opinion and judgment of the Court of Appeals for the Sixth Circuit was entered on July 11, 1979. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254.

QUESTION PRESENTED FOR REVIEW

I.

WHERE A DEFENDANT IS NOT ADVISED OF THE MANDATORY NATURE OF SPECIAL PAROLE, SHOULD THE DEFENDANT'S PLEA AND CONVICTION BE SET ASIDE?

II.

WHERE THE DEFENDANT WAS NOT ADVISED PROPERLY THAT HE COULDN'T BE COMPELLED TO BE A WITNESS AGAINST HIMSELF, SHOULD THE DEFENDANT'S CONVICTION AND SENTENCE BE SET ASIDE?

CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITUTION — AMENDMENT V

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in the time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

UNITED STATES CONSTITUTION — AMENDMENT VI

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

STATEMENT OF THE CASE

The Petitioner was charged with unlawfully distributing Heroin. Title 21 § 841(a) (1) USC. On June 20, 1978, after agreeing to withdraw the motions then pending, the Petitioner offered a Plea of Guilty under Rule 11, Federal Rules of Criminal Procedure, on September 21, 1978. The Defendant was sentenced to five (5) years of incarceration and five (5) years special parole.

REASONS FOR GRANTING THE WRIT

The Court of Appeals, pursuant to Rule 9(a), Rules of the Sixth Circuit, on its own Motion, confirmed the conviction on the plea of the Defendant without argument. Petitioner contends that the issues are so substantial as to require further consideration of Petitioner's arguments and that oral argument should have been granted to allow Petitioner to properly present the errors alleged.

I.

WHEN THE TRIAL COURT DOES NOT ADVISE A DEFENDANT OF THE MANDATORY NATURE OF SPECIAL PAROLE, THEN THE CONVICTION SHOULD BE SET ASIDE.

The Trial Court advised the Petitioner as follows:

> "The Court: Do you understand that the special parole term of three years, of at least three years, because it can be more, can be tacked onto a sentence if you were to be put on parole and you violated parole? Do you understand that?
>
> Mr. Williams: Yes."

Rule 11, Federal Rules of Criminal Procedure, requires that the Court determine that the Defendant understands "(1) the nature of the charge to which the plea is offered, mandatory minimum penalty offered by law, if any, and the maximum possible penalty provided by law . . ." "Rule 11 expressly directs the district judge to inquire whether a Defendant who pleads guilty understands the nature of the charge against him and whether he is aware of the consequences of his plea." *McCarthy* v *United States*, 394 US 459, 464, 22 Led 2d 418, 424, 89 S Ct 1166 (1969). The Act to which the Defendant pled guilty required that "any sentence imposing a term of imprisonment under this paragraph *shall*, in the absence of such a prior conviction, impose a special term of at least three years in addition to such term of imprisonment and *shall*, if there was such a prior conviction, impose a special parole term of at least six years in addition to such term of imprisonment." (Emphasis added) Title 21, USC § 841. The Sixth Circuit has held that the failure to advise the Defendant of the mandatory nature of the special parole provision of Title 21, USC § 841 mandates the vacating of a plea, *United States* v *Woolak*, 510 F2d 164 (6th Cir, 1975). The Trial Court must advise the Defendant of the direct consequences of a plea, *Brady* v *United States*, 397 US 742, 755, 90 US 1463, 1472, 25 Led 2d 747 (1969); *ABA Standards*, "Pleas of Guilty", § 1.4(c) (ii). By advising the Defendant that a special parole term *can* be added as a punishment, misstated the maximum penalty provided by the Act and did not serve to advise the Defendant of the mandatory nature of that Act. Thus, the Defendant was not advised of the maximum punishment allowable, and was not advised of all of the direct consequences of his plea.

II.

WHEN THE TRIAL COURT DOES NOT ADVISE A DEFENDANT THAT HE COULDN'T BE COMPELLED TO BE A WITNESS AGAINST HIMSELF, THEN THE DEFENDANT'S CONVICTION AND SENTENCE SHOULD BE SET ASIDE.

One of the Federal Constitutional rights waived by a plea of guilty is the privilege against *compulsory* self-incrimination guaranteed by the Fifth Amendment, *Boykin* v *Alabama*, 395 US 238 (1968). (Emphasis added). In the case at bar, the Trial Court, at page 9 of the plea transcript, advised the Petitioner as follows:

> "The Court: Do you also understand that if you had a trial and you wanted to take the stand to testify in your own defense, you could do so but you wouldn't be required to do so? Do you understand that?
>
> Mr. Williams: Yes, sir.
>
> The Court: And do you understand that if for any reason whatsoever you decided you did not want to take the stand, that could not be held against you — that is, no one could say or infer that you were guilty because you did not take the stand?
>
> Mr. Williams: Yes."

The Trial Court at no time explained to the Petitioner that he had a privilege against self-incrimination. A Trial Court, in advising a Defendant of his rights, should presume that the Defendant is ignorant of all of the rights and give a complete discussion of them; *United States* v *Gearin*, 496 F2d 691 (5th Cir, 1974).

The Fifth Amendment protection has been defined in the case of *United States* v *Escander*, 465 F2d 438 (5th Cir 1972) at pp 441-2 as follows:

> "The Fifth Amendment protects the individual from being *'compelled'* in any criminal case to be a witness against himself." (Emphasis added)
>
> "To be compelled is to be *subjected* to some coercion, fear, terror, inducement, trickery or threat — either physically or psychologically, blatantly or subtly. The hallmark of compulsion is the presence of some operative force producing an involuntary response. Compulsion is not present where the act proceeds from the exercise of choice or free will, self-impelled and freely undertaken, and unconstrained by interference. And, of course, the response must be free, from improper influences (e.g., fear, ignorance, trickery, etc.) such as would render it less than the exercise of unfettered will."

The Trial Court thus did not explain the true nature of compulsory self-incrimination. He merely stated that the Petitioner would not be "required" to take the stand in his own behalf and that if he chose not to, nothing could be inferred from that.

CONCLUSION

The Petition should be granted to review the important question of whether the Defendant did knowingly and intelligently waive his Fifth and Sixth Amendment rights after a full knowledge of the consequences of his plea.

WHEREFORE, Petitioner prays that this Honorable Court issue a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit and direct that the conviction be set aside and remanded to the Trial Court to plea anew.

Respectfully submitted,

/s/ RICHARD R. NELSON
Attorney for Petitioner
139 Cadillac Square
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Detroit, Michigan 48226
(313) 962-4655

Dated: August 7, 1979

APPENDIX "A"

JUDGMENT AND
PROBATION/COMMITMENT ORDER

(United States District Court
for the Eastern District of Michigan)

(Filed September 21, 1978)

(UNITED STATES OF AMERICA, Plaintiff, vs WILLIE L. WILLIAMS, Defendant. Docket No. 8-80041.)

In the presence of the attorney for the government the defendant appeared in person on 9/21/78.

COUNSEL: Richard P. Nelson.

PLEA: GUILTY, and the court being satisfied that there is a factual basis for the plea.

FINDING & JUDGMENT: Defendant has been convicted as charged of the offense(s) of Possession with intent to distribute Heroin, in violation of Title 21 United States Code § 841(a).

SENTENCE OR PROBATION ORDER: The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five years, under the provisions of § 4205(b)(2). It is further ordered that the defendant shall serve a special parole term of 5 years. Bond is exonerated. Remaining counts are hereby dismissed.

* * *

Date: 9/21/78

/s/ Philip Pratt
U.S. District Judge

APPENDIX "B"

NOTICE OF APPEAL

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed October 2, 1978)

(UNITED STATES OF AMERICA, Plaintiff, vs WILLIE WILLIAMS and IRENE BOONE, Defendants. Criminal No. 78-80041).

NOW COMES the Defendant, WILLIE WILLIAMS, by his attorney, RICHARD R. NELSON, and gives notice of the taking of an appeal to the United States Court of Appeals for the Sixth Circuit from the sentence of this Honorable Court of the Defendant to five years imprisonment on September 21, 1978.

/s/ Richard R. Nelson P18237
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Suite 1670
Detroit, MI 48243
259-4188

Dated: October 2, 1978

APPENDIX "C"

ORDER

(United States Court of Appeals
For the Sixth Circuit)

(Filed July 11, 1979)

(UNITED STATES OF AMERICA, Plaintiff-Appellee, v. WILLIE WILLIAMS, Defendant-Appellant. No. 78-5454).

BEFORE: LIVELY and MERRITT, Circuit Judges and PECK, Senior Circuit Judge

This appeal, perfected from a judgment of conviction entered in defendant-appellant's plea of guilty to a charge of distributing a controlled substance in violation of 21 U.S.C. 841(a)(1) and 18 U.S.C. § 2, has been submitted pursuant to Rule 9(a), Rules of the Sixth Circuit.

Defendant's plea of guilty was offered and accepted by the Court pursuant to a plea bargaining agreement and it is appellant's contention on appeal that the district judge inaccurately stated the maximum penalty for the offense and failed to advise him of his right to remain silent. We conclude that these contentions are without merit, and since it further appears that the issues on which the judgment of the Court depends are so unsubstantial as not to need further argument, Rule 9(b)(3), Rules of the Sixth Circuit,

It is ORDERED that the judgment of the district court be and it hereby is affirmed.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman, Clerk